

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

KEISHA ALLEN, et al., )  
                            )  
Plaintiffs,             )  
                            )       **Case No. 4:14-cv-0420-CEJ**  
vs.                      )  
                            )  
BAYER HEALTHCARE     )  
PHARMACEUTICALS INC., )  
                            )  
Defendant.             )

**PLAINTIFFS' MOTION TO REMAND PURSUANT TO 28 U.S.C. §1447 AND  
REQUEST FOR EXPEDITED CONSIDERATION**

COME NOW Plaintiffs and for Plaintiffs' Motion to Remand Pursuant to 28 U.S.C. §1447 and Request for Expedited Consideration state as follows:

1. This is a product liability medical device case brought by multiple women consumers who claim injury due to Defendant Bayer Healthcare Pharmaceutical Inc.'s ("Bayer") wrongful and tortious marketing of its Mirena intrauterine device (IUD). This suit was commenced on February 1, 2013, in the Circuit Court for the City of St. Louis. *Exhibit A to Plaintiffs' Memorandum in Support of Plaintiffs' Motion to Remand*, p. 1. On January 31, 2014, Bayer filed its first Notice of Removal claiming that non-diverse Plaintiff Barlow did not have a colorable claim under Delaware law because her statute of limitations had run. *Exhibit A*, p. 5. Plaintiffs filed their Motion to Remand and Memorandum in Support on February 4, 2014, arguing that Bayer's removal was out of time under 28 U.S.C. §1446(b) because it was not filed within 30 days of Bayer's having received Plaintiff Allen's medical records which Bayer used to claim that Barlow's statute had run. *Exhibit B and C to Plaintiffs' Memorandum in Support of Plaintiffs' Motion to Remand*, p. 2-4. Plaintiffs also argued that Plaintiff Barlow's claim was

colorable under Delaware law. *Exhibit C to Plaintiffs' Memorandum in Support of Plaintiffs' Motion to Remand*, p. 5-10. On February 20, 2014, this Court entered its Memorandum and Order granting Plaintiffs' Motion to Remand finding that because Defendant had not demonstrated the jurisdictional amount had been met for diversity jurisdiction, Defendant had failed to meet its burden of establishing federal jurisdiction. *Exhibit D to Plaintiffs' Memorandum in Support of Plaintiffs' Motion to Remand*.

2. On March 6, 2014, Defendant Bayer filed another Notice of Removal taking issue with the Court's finding regarding its failure to meet its burden in establishing diversity jurisdiction and once again asking this Court to stay this proceeding pending its transfer to an MDL. *Doc. 1.*

3. This case should be remanded to the Circuit Court of the City of St. Louis because:

- (a) More than one year has elapsed since the commencement of this action, and therefore Defendant's removal is absolutely time-barred under 28 U.S.C. §1446(c)(1); and
- (b) Defendant did not file its Notice of Removal within 30 days of receiving the "other papers" upon which it seeks federal diversity jurisdiction as required by 28 U.S.C. §1446(b)(3).

4. Plaintiffs herewith adopt by reference each and every statement of fact, citation of authority, and argument contained in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion to Remand Pursuant to 28 U.S.C. §1447 and Request for Expedited Consideration.

WHEREFORE, Plaintiffs respectfully submit Plaintiffs' Motion to Remand Pursuant to 28 U.S.C. §1447 and Request for Expedited Consideration and move this Court make and enter

its Order remanding this case to the Circuit Court of the City of St. Louis, State of Missouri, pursuant to 28 U.S.C. §1447(c).

Respectfully submitted,

DOWD & DOWD, P.C.

By: /s/ Douglas P. Dowd

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#### **CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on this 11<sup>th</sup> day of March, 2014, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification to all parties of record.

/s/ Douglas P. Dowd